REMARKS

Receipt of the Office Action of October 13, 2004 is gratefully acknowledged.

Finality of Office Action

The examiner cites the Response filed on July 16, 2004, acknowledges claims 1-4 and final rejections of claims 1-4.

In the Response filed on July 16, 2004, originally filed claims 1-4 are noted as having been originally presented. New claims 5-8 were added.

New claims 5-8 have not been acknowledged in the latest Office Action, nor acted upon.

Since claims 5-8 were properly presented with the Response filed on July 16, 2004, they should have been examined. Since they were not, the finality of the latest Office Action is improper and should be withdrawn.

Final Rejection of Claims 1-4

The rejection of claims 1-4 will be construed as non-final and will be addressed hereinafter.

Claims 1-4 are rejected as follows:

(1) claims 1 and 3 as anticipated by Vander Heyden under 35 U.S.C. 102(b); and (2) claims 2 and 4 as unpatentable over Vander Heyden in view of Fletcher-Haynes under 35 U.S.C. 103(a).

These rejections are identical to those made in the Office Action of April 16, 2004. They were addressed in the Response filed July 16, 2004.

To the remarks made in the Response filed July 16, 2004, the following is added.

1) The flow meter according to the present invention is intended for industrial use, as noted on page 3, lines 7-14 of the specification.

3) Regarding Vander Heyden, the examiner states on page 4 of the Office Action that "col. 13, lines 55-58" of Vander Heyden teaches " . . that the signal is proportional to the flow rate," and Vander Heyden allows " . . . a user to sell the output signal to be proportional to the flow rate or the square of the flow rate".

Even assuming, while not conceding, that Vander Heyden teaches that the signal is proportion to the flow rate, there is absolutely no teaching that the signal is proportion to the square of the flow rate. Applicant cannot find any disclosure in Vander Heyden on this point.

In order to expedite prosecution applicants have combined claims 1 and 5 and 6 and 7 to emphasize that the flow meter of the present invention replaces a differential flow meter in a fluid flow system.

In view of the foregoing, reconsideration and reexamination are respectfully requested and claims 1-4, 6 and 8 found allowable.

Respectfully submitted,
BACON & THOMAS, PLLC

Date: January 13, 2005

Felix J. D'Ambrosio
Registration No: 25,721

Customer Number *23364*
BACON & THOMAS
625 Slaters Lane, Fourth Floor
Alexandria, Virginia 22314
Phone: (703) 683-0500
S:\Producer\fjd\CLIENTS\Endress+Hauser Holding GmbH\SCHA3004 - FL0199\Jan 13, 2005 response.wpd